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stopped. Clearly in the apportionment between labor and capital of monopoly gains no economic law applies. Industrial privateering is not legitimate business, and those who are engaged in it are perfectly justified in believing that economic laws are here in abeyance. The rightful claimants to the product of industry have been dispossessed, and the apportionment must be made in accordance with some other principles than those of economic justice. Such gains, whether due to combinations of labor, or of capital, or both in certain industries, are indeterminate. In the apportionment of them, appeal must be made to force, not to economic law. This is not, however, as is sometimes declared, any impeachment of economic science or teaching, but rather of industrial honor. Economics is not a science of industrial bucaneeering.

JOHN CUMMINGS.

THE STUDY OF COMPARATIVE LEGISLATION.

I.

COMPARATIVE legislation may be considered either as a science or as a method in the study of various political and social sciences. It is a method of study in much the same sense in which history and statistics are methods rather than distinct sciences; but it has a better claim than either of these to the name of science. The historian collects and comments upon facts which have happened in past time; the statistician collects, classifies, and comments upon facts which are adapted to quantitative presentation; and neither the accident of having happened in past time nor the accident of quantitative treatment necessarily gives to the body of knowledge so brought together the unity required to make it a science. If history and statistics have sometimes approached the status of true sciences, it has been due, not to any fundamental unity in the facts presented, but rather to the labors of a few individual philosophers whose exceptional genius has enabled them to elaborate separate and more or less disjointed facts into harmonious systems of philosophy. But comparative legislation is a science in its own right; for it deals primarily with phenomena of a single kind—legislation; and it is demonstrably capable of being developed into a systematic body of knowledge possessing a high degree of logical unity. Indeed, its unity is so great that the science is not difficult to classify. As it deals with legislation, it is a political science. But as politics itself

can scarcely be separated from economics and sociology, so comparative legislation is in some of its phases as much economic or social as it is political in the strict sense of the word.

To the specialist, comparative legislation, like statistics or history, is a method for the study of his particular hobby; and without it any of the political or social sciences is like a two-legged stool. Unlike statistics (if not unlike history also), it can be applied only to departments of knowledge having a political or social bearing; that is, to those sciences which are of importance to the public as a whole rather than to individuals. Thus while statistics may be used by the biologist in recording variations, or by the pathologist in studying disease, comparative legislation is of use only in studying questions which are affected by laws of human origin. It can be used by the physician in the study of public hygiene, but not in the study of individual cases. Within the field of political and social science, however, every department of knowledge must take account of legislation; and comparative legislation is not only useful to the scientist as such, but it is of equal importance to practical men of affairs—to legislators, public administrators, practicing lawyers, business men, reformers, philanthropists of every kind. There is no social science of practical importance to a larger number of individuals, and none which may be made of greater importance to the public welfare.

II.

There is a large department of inquiry to which many names and various methods have been applied, in which the comparative study of legislation is of paramount importance, and yet which has in the past been given over mainly to speculation. The primary subject of inquiry is: What are the proper functions of government? The political philosophers have sought to answer this question out of their subjective conceptions of the nature of the state; and both the classical economists and the socialists have followed their example, employing also some superficial observations upon the functions actually undertaken by certain governments, and upon the state of society in general, but reaching diametrically opposite conclusions. It is only by means of a comparative study of legislation that science will be able to arbitrate between *laissez-faire* and socialism. The question of governmental functions is a pre-eminently practical problem, which is not capable of solution by *a priori* methods, or without a careful consideration of actual facts and circumstances. Political

philosophy was the metaphysical stage in the development of a potential science which still awaits the systematic study of comparative legislation in order that it may grow to the status of a full-fledged science.

The French political philosophy of the eighteenth century found expression in the dictum that "that government is best which governs least;" or, in other words, that the very best of all plans of finance is to spend little, and the best of all taxes is that which is least in amount.¹ A narrow and distorted view, certainly, though easily explainable in the light of the legislation actually in force in France and some other countries at the time it was formulated. How much grander was the ideal of our own forefathers, as soon as they began to free themselves from the traditions and influence of the French philosophy: "The aggregate happiness of mankind is, or ought to be, the end of all government."² It is noteworthy that this doctrine was announced by the Father of his Country—a man little versed in the subtleties and platitudes of political philosophy, but a practical man and leader of men, typical of the best class of Americans of his day, and so representative of the whole people that in the newborn republic he was twice elected president without opposition, and might almost have been king for life. It is noteworthy also that the Constitutional Convention conferred upon the Congress power to "provide for the general welfare." Thus, in spite of the influence of the French philosophy, and notwithstanding the individualism which is supposed to characterize the typical American, the principles upon which our government was founded were rather nearer to socialism than to *laissez-faire*.

Half a century after Washington even the economists and political philosophers began to accept the broader view. John Stuart Mill, in his later years more especially, may be said to mark the turning-point in economic thought, he was the first great economist to announce such radical views as that—

In the particular circumstances of a given age or nation, there is scarcely anything, really important to the general interest, which it may not be desirable, or even necessary, that the government should take upon itself.³

The modern German view would appear to be that, when a new service is to be performed, the presumption is in favor of its being undertaken by the state or municipality; and a similar doctrine

¹ J. B. Say.

² Washington.

³ *Principles of Political Economy*, Book V, chap. 11.

is accepted by Professor Ely, though not without an important qualification :

If government is as honest and competent as the society it represents ; the greater the proportion of public to private expenditure which can be permanently maintained, the better.⁴

Where the government is somewhat more honest and competent than the governed, this principle assumes increased weight, and becomes in some cases a safe working hypothesis ; for under such circumstances taxation is a system of enforced saving for such essential purposes as schools, roads, and public order, which the taxpayers might not have the requisite prudence, initiative, and self-control to provide for themselves.⁵

If the proper extent of governmental activity is something to be regulated according to place and circumstance, and requires a study of actual experience for its determination, the same is even more true of the directions which such activities should take, and the manner of their performance ; yet we have no comprehensive study of the work of governments in general upon which to base a conclusion. The most useful utterances upon these questions are those of certain economists, which, though expressed as if *a priori*, are really based upon a considerable knowledge of governments and their activities. For example, President Walker's essay on *Socialism* might well be taken as the starting-point in the development of a science of public functions. Writers on finance have usually neglected the opportunity open to them in the subject of public expenditures (which must be of even greater importance than the means of meeting them), for they have either passed by the subject altogether or have dismissed it with a few platitudes and statistics ; but there are two or three exceptions, not the least notable of whom is Professor Adams, who combines philosophy with a practical knowledge of affairs in such a way as to make his opinions convincing. That the activities of government must depend upon circumstances is well illustrated by a few meaty extracts from his *Science of Finance* :

It is futile to urge disarmament, and the consequent extinction of the military budget, so long as there continues to be a conflict of legal ideas.

It is essential for the modern state to support public instruction, because there is no other way to guard against the fading of its own ideals through the rise of an aristocracy of learning.

⁴ *Outlines of Economics.*

⁵ For the formulation of this principle I am indebted to Hon. William F. Willoughby.

A local government may very properly enter upon a more comprehensive line of activities than the national government, since the more restricted the territory over which a government has jurisdiction, the greater likelihood will there be of community of interests among its citizens.

Here, then, is an opportunity for the development of a new science, of which only the rudest outlines have yet been drawn—a science which shall determine the right limits, directions, and modes of government action under given conditions by a comparative study of the results of such action under all conditions. It must be much more than a digest of statute law, but as the everyday activities of government are based upon legislation, it must begin with the statutes and the motives which led to their enactment, and proceed thence to a study of their interpretation, of their actual administration, and of their effects. When similar laws are found to have widely different results in different countries, a reason must be found for the difference; and thus certain laws of cause and effect may be established which may be woven together into a system of philosophy having a firmer basis than any political philosophy thus far known. Such a science would find its precepts heeded by legislators and public officials, and would influence the work of governments more than all other sciences and systems of philosophy combined.

The possibility of creating such a science has not been entirely overlooked, but the necessary materials have been lacking, and the labor of collecting and digesting them has been far too great for any one man to undertake. The subject-matter of the proposed science is taught after a fashion in some universities under the name of "administration;" but administration is really only a part of the subject, and it might with equal propriety be called "legislation." In other universities and colleges it is taught as "practical political economy," or sprinkled into a general course in economics or political science; and, indeed, neither science is complete without it. If economics had been intended to be a science of private wealth and the satisfaction of individual wants, it would never have been called "political economy," and economists would care nothing for *The Wealth of Nations*. That some economists should devote themselves to psychological theories of value, or other phases of the individual economy, is a natural enough instance of differentiation; but the differentiation in this case has been a little one-sided. There have not been lacking detached studies of certain phases of the public economy, but their claim to constitute a science has not been widely

recognized among the economists; yet it cannot be denied, unless upon the grounds of the magnitude of the subject and the incompleteness of the materials. Finance, etymologically if not otherwise logically or reasonably, has devoted itself to the problem how to pay the bills of governments, without much regard to what they are incurred for; and so has left between itself and economics (as the word is now understood) a gap which can be filled only by a new science of government activities.

Professor Folwell has twice urged before the American Economic Association a division of economics into "private economy" and "public economy," which he has long employed in the classroom;⁶ and the division has been adopted by Professor Ely in his most comprehensive text-book.⁷ "Private economy" may not be the most appropriate name to apply to the social science which treats of the industrial organization of society,⁸ though it does very well for the theory of value; but "public economy" certainly expresses the idea intended; and the line between the two is no harder to draw than the line between economics and politics, with which, indeed, it may be said to coincide.

Professor Moses deplors the tendency to take account of all the factors concerned in an economic problem, as a retrograde movement away from the differentiation of sciences. The broad field which Adam Smith attempted to cover, he says, is not a science at all, but the Art of social control.⁹ Is this an admission that the art of social control has as yet no scientific basis? Or must those who would practice this art first master all the social sciences, and then construct their own social philosophy? Professor Ross has written a little book on *Social Control*, intended as a contribution toward enabling society "to go about the business of control in a scientific way:" but while it demonstrates the possibility of systematizing the subject, it is too subjective and metaphysical to be of much practical value as a guide. The science of social control, or public economy, still exists only in the clouds of speculation; it must needs be brought down to earth before it can greatly influence the corresponding art, or indeed become truly scientific.

⁶ *Publications of the American Economic Association*, Vol. IV, No. 5, and Vol. VIII, No. 1.

⁷ *Outlines of Economics*.

⁸ "Industrial Economy" would be a more appropriate name.

⁹ *Quarterly Journal of Economics*, Vol. XI (1897).

Men who have made no special study of social control, either in theory or in practice, are frequently called, sometimes through no fault of their own, to administrative or legislative posts where they must practice the art as best they may. When this happens, the novice feels the need of a handbook which he could master on his way to Washington or San Juan or Manila. After reaching his post, his desire is for a treatise of sufficiently encyclopedic dimensions to solve the knotty problems of detail as they arise day by day. Either of these requisites is difficult to meet satisfactorily; but the universities might at least offer courses in public economy which would be useful to the increasing numbers of their students who find themselves in the public service after graduation, with only a theoretical and decidedly inadequate preparation, and having only the most general notions regarding the work done by their own government. Statutes and public documents make excellent materials for the seminar. In view of the pressing need for trained men in public life, it would seem that the state universities especially should take up the work of training for public service; work of this kind would soon more than pay for itself in the increased economy and efficiency of public administration.

III.

For the study of comparative legislation societies have been organized and journals established in the most important countries of Europe, but America is strangely behindhand in this respect. There is no country on the face of the globe where the study of comparative legislation is so much needed, or where the natural conditions for it are so favorable, as in the United States, for here we have some fifty legislatures, spread well over the face of the earth, making laws in the same language, but under a great variety of local conditions. The New York State Library, thanks to the initiative genius of Melvil Dewey and the skill of Messrs. Shaw, Durand, and Whitten, has made an important beginning toward the organization of the current output of the commonwealth legislatures into a systematic body of condensed information; to the annual index are now added an annual review of legislation by various specialists, an annual digest of governors' messages, and occasional monographs, all of which increase the availability of the material. There is great need for a corresponding service digesting the legisla-

tion of other countries, existing and current; for there is neither any comprehensive source of information concerning such legislation, nor any complete collection of the laws themselves available to American students. Dr. Herbert Putnam, librarian of Congress, included in his estimates for the present fiscal year an item of \$28,000 for an index to comparative legislation, to be published in a monthly bulletin, with an annual summary, references to articles in scientific journals, and contributions by foreign correspondents, but although such an index would be of incalculable value both to Congress and to private students, the proposal was omitted from the appropriation bill. The economists and political scientists have only themselves to blame for this unfortunate outcome, for if they had awakened to the importance of the project in time to make themselves heard in the matter, there would have been no great difficulty about securing the appropriation. It is to be hoped that when the project is renewed, greater interest will be taken in it both in and out of Congress.

A government publication could not be expected to comment freely upon legislation; its province would be to assemble the materials upon which students might base their own conclusions. The government index or digest would leave room for a voluntary organization for the discussion of comparative legislation, and would indeed be almost essential to the successful working of such a society. While Mr. Putnam's proposal was before Congress, a movement for the organization of a society of comparative legislation assumed form, first in a conference called at Washington, December 30, 1902, to discuss the question, and then in the appointment by that meeting of a representative committee of fifteen to confer with the representatives of existing societies and present a plan of organization. The scope of the proposed organization was broadened at the conference to include political science and political philosophy, as well as comparative legislation. The desirability of some such organization was admitted on all hands; but it was not so easy to agree as to whether it should be a new and independent society or a section of one or more societies such as the American Economic and Historical Associations. The associations named, through committees, have agreed to set apart a session of the New Orleans meeting for a further discussion of the entire question. The report of the committee of fifteen will then be presented, and one or the other form of organization will doubtless be determined upon. Whether the decision is in favor of a new society or a section or joint section of the

existing associations, the effect will be much the same ; as most of the persons interested in political science and comparative legislation are interested also in history, economics, or social science in some form, their organization will tend to the closer affiliation of the existing associations, as well as to the enrichment of the corresponding sciences by increased emphasis upon the method of comparative legislation.

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